

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

In the Matter of)	
)	
2018 Biennial Review of)	WT Docket 18-374
Telecommunications Regulations)	

REPLY COMMENTS

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL), submits these comments in response to Comments in this docket filed by the Community Associations Institute (CAI).¹ The Commission in its Notice does not undertake to review in this Docket any provision in Part 97 of the Commission’s Rules.² Matters contained in, or pertinent to, Part 97 therefore are outside the scope of this Docket.³

Nevertheless, CAI addresses at some length Section 97.15(a) of the Commission’s Rules. Since the comments are outside the scope of the Commission’s Public Notice, the ARRL requests that the comments be disregarded.

¹ Comments of Community Associations Institute in WT Docket No. 18-374 (dated January 30, 2019).

² FCC Public Notice, DA 18-1260 (released Dec. 17, 2018).

³ We also note that Part 97 provisions do not address activities of any “telecommunications service provider” as that term is used in the biennial review statutory provision, 47 U.S.C. §161. *See* definition of “telecommunications service” at 47 U.S.C. § 153(53) and the *2002 Biennial Regulatory Review*, 18 FCC Rcd 4726 (2003), *aff’d on other grounds, Cellco Partnership v. FCC*, 357 F.3d 88 (D.C. Cir. 2004). An “amateur station” by definition is “a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest”, 47 U.S.C. §153(3).

The provision of Part 97 that CAI addresses is a limited federal pre-emption of state and local regulation that otherwise would prohibit or unreasonably impair outdoor amateur radio antennas.⁴ In place of an outright prohibition, the Commission requires balancing of legitimate local and State land use regulation with the Federal interest in an effective Amateur Radio Service. CAI argues that similar balancing should not be extended to private land covenants such as those enforced by private Homeowner Associations (HOAs).

Lest there be doubt in the record as to why such balancing *should* be extended to private land regulation, ARRL hereby submits this response. ARRL would submit a much more detailed and specific analysis were Part 97 to be a subject in this proceeding. Given the context, it is appropriate to make a brief response.

I. Preclusive Community Association Restrictions Frustrate the Federal Interest in a Vital Amateur Radio Service

Whatever CAI's arguments for continuing maximum enforcement of private land use restrictions even when unreasonable and in contravention of the public interest, there can be no doubt that the growth and application of such restrictions in recent decades have significantly impeded the development and training of an experienced amateur radio corps. This impediment in turn has negatively impacted the ability of radio amateurs to respond to public emergencies and impeded private experimentation and development of new technologies.

In previous filings, we have detailed how the preponderance of housing developments constructed during recent decades have included land use restrictions imposed by the original developers before the first housing units were even sold, but which restrictions continue in perpetuity. Most of those restrictions outright prohibit or severely restrict the placement of

⁴ 47 C.F.R. § 97.15(b). *See, Request for Declaratory Ruling to Preempt State and Local Regulation of Amateur Radio Transmitters and Antennas*, Docket 85-21, Memorandum Opinion and Order, FCC DA 85-506, 50 Fed.Reg. 38813 (pub. Sept. 25, 1985).

antennas outside the housing unit for amateur radio use. Some restrictions go so far as to prohibit all radio communications from an owner's home, regardless of how such radio communications are accomplished. As the ARRL has documented, sometimes such restrictions have been applied even to antennas that are not visible to other homeowners, or that are hidden from view in structures such as flag poles that are indistinguishable from other like structures present in the community. The ARRL has filed chapters of factual material that should be – and by most reasonable persons, has been – considered conclusive on this point.⁵

Self-training and maintaining one's skills in amateur radio techniques is essential to the provision of effective emergency communications assistance. Such assistance almost always is needed suddenly and without prior notice. Regular on-air exercises and maintenance of up-to-date working equipment is essential to being able to render emergency assistance when needed. The only effective way to accomplish the needed emergency training is for participants to be active on the airwaves with their equipment, and this usually means from their homes.

It also is from homes, with established antennas and equipment, that many volunteers can best offer assistance during an emergency situation through message handling and relays. Radio propagation is constantly changing on the lengthier circuits and changes significantly with the time of day, seasons, and periodic solar cycles. Only the experience of regular operating can develop a practical knowledge of what frequencies and modes would be best to communicate with a specific geographic area when such communication is urgently needed.

Similarly, our country is experiencing an acute shortage of persons trained in the fields of science, technology, engineering, and mathematics (STEM). Amateur radio is a natural entry point to developing interest in these fields among youth. But for that to be effective, as a

⁵ See, *e.g.* ARRL Comments in GN Docket 12-91 filed May 16, 2012, in which ARRL included examples of CC&R restrictions relating to antennas at Appendix C, and case studies of the experiences of licensed radio amateurs with CC&R provisions at Appendix D.

practical matter children and young adults must be permitted a capable antenna with which to discover how communications technologies work and can be employed.

The issue really isn't whether an inability to erect antennas at home effectively precludes amateur training. It obviously does. A more useful question to ask is whether legitimate land use concerns could be met while the federal interest in robust amateur radio emergency capabilities, promotion of STEM disciplines, and other public interest benefits also could be met.

We conclude that the federal interest in a vibrant, self-trained amateur radio corps should be taken into account and balanced properly with other interests.

II. Private Restrictions Have Been Subject to Limited Federal Pre-emption in Similar Appropriate Circumstances

In multiple services regulated by the Commission, private land use restrictions that would have prevented placement of outdoor antennas have been subjected to limited Federal pre-emption when required by the public interest. Outside placement of antennas generally is necessary to effectively communicate. In recognition of that scientific fact, in multiple instances Congress and the Commission have exercised limited Federal pre-emption to protect the rights of residents to access communication sources for both reception and transmission. A balance has been sought in these instances between the rights of residents to communicate with the rights and desires of other residents.

Limited Federal pre-emption has protected citizens and resulted in relatively few disputes. More importantly, residents and citizens have been the beneficiaries of being freed of constraints that developers imposed when developing the property not necessarily for the benefit of future homeowners, but certainly to maximize access to bank loans needed to proceed with the development.

Thus, pursuant to the Commission's rules, both homeowners and tenants today may place outdoors the devices and antennas necessary to receive the signals transmitted by providers in the Direct Broadcast Satellites Service (DBS), Multichannel Multipoint Distribution Service (MMDS), Instructional Television Fixed Service (ITFS), and Local Multipoint Distribution Service (LMDS). Homeowners and tenants also may use outside antennas to receive over-the-air broadcast signals without any limitation on the size of the antennas employed. Suitable antennas placed outdoors similarly are permitted for the purpose of receiving and transmitting fixed wireless signals.⁶

In a substantial number of instances the antennas already allowed for outdoor placement, notwithstanding land use restrictions, appear identical or similar in size and shape to those commonly used by radio amateurs. In many circumstances there is no outward difference between an antenna permitted under the current rules and an antenna used by an amateur radio operator, yet one is permitted and the other is prohibited — solely on the irrational basis of the content of the radio waves captured by the antenna. It is time that the irrational application of land use restrictions to amateur antennas be preempted and conformed to reflect the realities of today's world.

Amateur radio operators use a wide variety of frequencies and modes, so some do require antennas that can be larger or of different shape. But in such situations reasonable accommodation short of outright prohibition often would result in satisfactory accommodation of amateur radio communications.

III. Conclusion

The Federal interest in a vibrant, self-trained amateur radio corps should be taken into account and balanced properly with other interests. Private restrictions have been subject to

⁶ See 47 C.F.R. § 1.4000.

limited Federal preemption in similar appropriate circumstances. However, matters pertinent to Part 97 amateur regulation are outside the scope of this Biennial Review proceeding and should be addressed elsewhere.

Respectfully submitted,

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By:

A handwritten signature in blue ink, reading "DR Siddall". The signature is written in a cursive, flowing style.

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